IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2670 OF 2004

IN

SUIT NO. 1644 OF 2004

Harisharan & Anr. ..Plaintiffs

versus

M/s. Kawamim Pacific Pte.
Ltd. & Ors. ..Defendants

Mr. Girish Desai i/b. U. Ramdas for the Plaintiffs.
Mr. J. P. Sen i/b. Desai and Diwanji for the Defendant Nos. 1 and 2.

CORAM: D. G. DESHPANDE,J.

DATE : 29TH SEPTEMBER, 2004.

P.C. :

1. Heard. An order was passed by this court on 5.8.2004. Paragraphs 15 and 17 which are relevant for the purpose of this notice of Motion, are reproduced hereinbelow:

> "15. The learned counsel for the plaintiffs submits that it would take at least eight weeks' time for the plaintiffs to prepare their case in furtherance of arbitration

clause and invoke and take necessary steps for getting an Arbitrator appointed at Singapore to whom the dispute may be referred either by mutual agreement or taking recourse to the legal procedure which governs the matter at Singapore. In the meantime, the plaintiffs would extend the period of the Letters of Credit by so instructing their bankers i.e. defendant No.4 for a period of ten weeks. In the meantime, defendant Nos. 1 and 2 shall not invoke the Letters of Credit and would extend all co-operation to the plaintiffs in getting the matter referred before an Arbitrator.

17. It is made clear that this Court would not entertain any prayer made by the party for granting any further relief if it comes to a finding that the party who is seeking the benefit of such modification is at fault. Defendant Nos. 1 and 2 would not invoke the Latter of Credit for eight weeks from today,"

2. Now this notice of motion is taken out by the plaintiffs for seeking extension of time by prayer (a) with reference to the Arbitrator and by prayer (b) with reference to the injunction. Both the

prayers were earlier granted subject to conditions as reproduced by paragraphs 15 and 17 above. Advocate for the defendants No.1 and 2 has no objection regarding prayer (a) but regarding prayer (b) according to him the plaintiffs are at fault and therefore they are not entitled to any further extension or injunction. This submission is made on the basis of paragraph 17 of the order, which is reproduced above. Counsel for the defendants No. 1 and 2 pointed out to me that on different dates many steps are taken by the plaintiffs after the aforesaid order was passed. It cannot be concluded that the plaintiffs have deliberately chosen not to take steps as directed by the order. It is true that there is some delay on their part but once the matter was referred to the Arbitrator and injunction was granted, as a last chance under section 148 of CBC four weeks time granted for prayer (a), four weeks time for prayer (b) and six weeks time granted to the plaintiffs to extend period of Letter of Credit. It is clarified that no further extension at the instance of the plaintiffs in respect of prayers (a) and (b) will be granted.

3. Notice of Motion disposed of.

4. Certified copy expedited.

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